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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,729	10/03/2005	Alain Lemieux	08319-010	4308
56535 7590 08/17/2007 BROUILLETTE & PARTNERS METCALFE TOWER, 1550 METCALFE STREET SUITE 800 MONTREAL, QC H3A-1X6 CANADA			EXAMINER VO, HAI	
			ART UNIT 1771	PAPER NUMBER
			MAIL DATE 08/17/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/530,729	Applicant(s) LEMIEUX, ALAIN	
	Examiner Hai Vo	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2 and 4-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, and 4-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear as to what is meant by "the same". Is the top layer structurally or chemically the same as the bottom layer?

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2, 4 and 5 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Winkler (US 2,515,847).

Winkler teaches a surfacing material comprising a top layer of hard rubber 15, a middle layer 14 of a sponge rubber and a bottom layer 13 of sponge rubber as

shown in figure 1. The sponge rubber is more compressible than the hard rubber. The middle layer is easily compressed than the top and bottom layers (column 3, lines 5-30). Note that Winkler discloses the bottom layer 13 is *preferably* not possess any substantial degree of resilience or compressibility; however, since Winkler does disclose the use of hard rubber for the bottom layer Winkler does not teach away from the bottom layer having some degree of compressibility. Likewise, the top layer is compressed before the bottom layer upon impact. The top layer 15 and the bottom layer 13, each are about 1 inch thick (column 2, lines 47-48 and column 3, lines 20-22). Winkler does not specifically disclose the bottom layer absorbing the excess impact and shock that is not absorbed by the middle layer and the top layer. It appears that the surface material meets all the structural limitations as set forth in the claims; therefore, it is not seen that the bottom layer would not have performed differently than the bottom layer of the present invention in terms of shock absorption characteristics as like material has like property. Accordingly, Winkler anticipates or strongly suggests the claimed subject matter.

6. Claims 1, 2, and 4-9 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over EP 890 373. EP'373 teaches a carpet structure comprising three foam layers as shown in figure 1. The outer foam layers have a density greater than that of the inner layer (abstract). The thickness of the inner layer is greater than the thickness of the outer layer (abstract). The outer layer is stiffer than the inner layer (column 3, lines 20-23). The inner layer has higher compressibility than the outer layers (column 3, lines 40-45). The foam is of

polypropylene, polyurethane (column 5, lines 35-38). The thickness of the outer layers can be different (claim 12, column 2, lines 55-57). EP'373 does not specifically disclose the bottom layer absorbing the excess impact and shock that is not absorbed by the middle layer and the top layer. It appears that the carpet structure meets all the structural limitations as set forth in the claims; therefore, it is not seen that the bottom layer would not have performed differently than the bottom layer of the present invention in terms of shock absorption characteristics as like material has like property. Accordingly, EP'373 anticipates or strongly suggests the claimed subject matter.

7. Claims 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 890 373 as applied to claim 1 above, and further in view of D'Luzansky (US 5,052,158). EP'373 does not specifically teach the outer layers having different density. D'Luzansky teaches a cushioned exercise floor comprising an upper foam layer and a lower foam layer joined together wherein the upper foam layer and the lower foam layer could have the same or different density (column 35-50).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the bottom layer having a density higher than the density of the upper layer motivated by the desire to prevent "bottoming out" effect.

8. Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holtrop et al (US 4,476,183) in view of EP 0 999 026. Holtrop teaches a headliner comprising a polyurethane foam sandwiched between two expanded polystyrene

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foam layers and the outer surface of the polystyrene foam layer covered with a fabric as shown in figure 1. The polyurethane foam is about 0.65 cm thick and the polystyrene foam about 0.38 thick (column 7, lines 20-25). Holtrop does not teach the headliner comprising a polyurethane foam sandwiched between two expanded polypropylene foam layers. EP'026, however, teaches a headliner comprising a foam layer bonded to a fabric material wherein the foam layer is of an expanded polystyrene or expanded polypropylene (column 3, lines 5-15). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute expanded polypropylene for expanded polystyrene because these two materials have been shown in the art to be recognized equivalent foam materials for providing the integral connection between the fabric and the foam layer of the headliners.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Vo whose telephone number is (571) 272-1485. The examiner can normally be reached on Monday through Thursday, from 9:00 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

HV

/Hai Vo/
Primary Examiner, Art Unit 1771